

M.R. 3140

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered December 3, 2015.

(Deleted material is struck through and new material is underscored.)

Effective immediately, Supreme Court Rule 604 is amended, as follows.

Amended Rule 604

Rule 604. Appeals from Certain Judgments and Orders

(a) Appeals by the State.

(1) *When State May Appeal.* In criminal cases the State may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114-1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; or suppressing evidence.

(2) *Leave to Appeal by State.* The State may petition for leave to appeal under Rule 315(a).

(3) *Release of Defendant Pending Appeal.* A defendant shall not be held in jail or to bail during the pendency of an appeal by the State, or of a petition or appeal by the State under Rule 315(a), unless there are compelling reasons for his or her continued detention or being held to bail.

(4) *Time Appeal Pending Not Counted.* The time during which an appeal by the State is pending is not counted for the purpose of determining whether an accused is entitled to discharge under section 103-5 of the Code of Criminal Procedure of 1963.

(b) Appeals When Defendant Placed Under Supervision or Sentenced to Probation, Conditional Discharge or Periodic Imprisonment. A defendant who has been placed under supervision or found guilty and sentenced to probation or conditional discharge (see 730 ILCS 5/5-6-1 through 5-6-4), or to periodic imprisonment (see 730 ILCS 5/5-7-1 through 5-7-8), may appeal from the judgment and may seek review of the conditions of supervision, or of the finding of guilt or the conditions of the sentence, or both. He or she may also appeal from an order modifying the conditions of or revoking such an order or sentence.

(c) Appeals From Bail Orders by Defendant Before Conviction.

(1) *Appealability of Order With Respect to Bail.* Before conviction a defendant may appeal to the Appellate Court from an order setting, modifying, revoking, denying, or

refusing to modify bail or the conditions thereof. As a prerequisite to appeal the defendant shall first present to the trial court a written motion for the relief to be sought on appeal. The motion shall be verified by the defendant and shall state the following:

- (i) the defendant's financial condition;
- (ii) his or her residence addresses and employment history for the past 10 years;
- (iii) his or her occupation and the name and address of his or her employer, if he or she is employed, or his or her school, if he or she is in school;
- (iv) his or her family situation; and
- (v) any prior criminal record and any other relevant facts.

If the order is entered upon motion of the prosecution, the defendant's verified answer to the motion shall contain the foregoing information.

(2) *Procedure.* The appeal may be taken at any time before conviction by filing a verified motion for review in the Appellate Court. The motion for review shall be accompanied by a verified copy of the motion or answer filed in the trial court and shall state the following:

- (i) the court that entered the order;
- (ii) the date of the order;
- (iii) the crime or crimes charged;
- (iv) the amount and condition of bail;
- (v) the arguments supporting the motion; and
- (vi) the relief sought.

No brief shall be filed. A copy of the motion shall be served upon the opposing party. The State may promptly file an answer.

(3) *Disposition.* Upon receipt of the motion, the clerk shall immediately notify the opposing party by telephone of the filing of the motion, entering the date and time of the notification on the docket, and promptly thereafter present the motion to the court.

(4) *Report of Proceedings.* The court, on its own motion or on the motion of any party, may order court reporting personnel as defined in Rule 46 to file in the Appellate Court a report of all proceedings had in the trial court on the question of bail.

(5) *No Oral Argument.* No oral argument shall be permitted except when ordered on the court's own motion.

(d) Appeal by Defendant From a Judgment Entered Upon a Plea of Guilty. No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment. No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or

The certificate of counsel shall be in the following form:

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I, _____, attorney for Defendant, certify pursuant to Supreme Court Rule 604(d) that:

1. I have consulted with the Defendant in person, by mail, by phone or by electronic means to ascertain the defendant's contentions of error in the entry of the plea of guilty and in the sentence;

2. I have examined the trial court file and report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing; and

3. I have made any amendments to the motion necessary for the adequate presentation of any defects in those proceedings.

Respectfully submitted,

Date

Attorney for the Defendant

(e) Appeal From an Order Finding Defendant Unfit to Stand Trial or Be Sentenced. The defendant or the State may appeal to the Appellate Court from an order holding the defendant unfit to stand trial or be sentenced.

(f) Appeal by Defendant on Grounds of Former Jeopardy. The defendant may appeal to the Appellate Court the denial of a motion to dismiss a criminal proceeding on grounds of former jeopardy.

(g) Appeal From an Order Granting a Motion to Disqualify Defense Counsel. The defendant may petition for leave to appeal to the Appellate Court from an order of the circuit court granting a motion to disqualify the attorney for the defendant based on a conflict of interest. The procedure for bringing interlocutory appeals pursuant to this subpart shall be the same as set forth in Supreme Court Rule 306(c).

Amended effective July 1, 1969; amended October 21, 1969, effective January 1, 1970; amended effective October 1, 1970, July 1, 1971, November 30, 1972, September 1, 1974, and July 1, 1975; amended February 19, 1982, effective April 1, 1982; amended June 15, 1982, effective July 1, 1982; amended August 9, 1983, effective October 1, 1983; amended April 1, 1992, effective August 1, 1992; amended October 5, 2000, effective November 1, 2000; amended February 1, 2005, effective immediately; amended December 13, 2005, effective immediately; amended February 10, 2006, effective July 1, 2006; amended Nov. 28, 2012, eff. Jan. 1, 2013; amended Feb. 6, 2013, eff. immediately; amended Dec. 11, 2014, eff. immediately; amended Dec. 3, 2015, eff. immediately.

Committee Comment
(February 10, 2006)

Paragraph (g)

Paragraph (g) permits interlocutory review of certain attorney disqualification orders but does not change attorney disqualification law. The circuit court still has discretion to accept or reject a defendant's conflict of interest waiver, based on consideration of the interests identified in *People v. Ortega*, 209 Ill. 2d 354 (2004).

Committee Comments
(February 1, 2005)

The language in paragraph (a) allowing interlocutory appeals from orders decertifying a prosecution as a capital case or finding the defendant to be mentally retarded provides for the kinds of appeals contemplated by section 9–1(h-5) of the Criminal Code of 1961 (720 ILCS 5/9–1(h-5)) and section 114–15(f) of the Code of Criminal Procedure of 1963 (725 ILCS 5/114–15(f)).

Committee Comments
(Revised July 1, 1975)

Rule 604 was amended in September 1969 to add paragraph (b), dealing with appeals when probation has been granted. The 1969 amendment made what was formerly the entirety of Rule 604 into paragraph (a) and made an appropriate change in the title of the rule.

Paragraph (a)

Subparagraph (1) of paragraph (a) is former Rule 27(4), as it existed until January 1, 1967, with slight changes in language. (Rule 27(4) was derived from sections 121-1 and 120-2 of the Code.) The rule makes it clear that an order dismissing an indictment, information or complaint for any of the grounds enumerated in section 114-1 of the Code is appealable.

Subparagraph (2) was added by amendment effective November 30, 1972.

Subparagraph (3) is former section 120-3(a) of the Code without change.

Subparagraph (4) is section 120-3(b) of the Code without change.

Paragraph (b)

Paragraph (b) is based upon sections 117-1(d) and 117-3(e) of the Code and is included in the rule in conformity with the policy of covering all appeals in the supreme court rules, as contemplated by the judicial article of the Constitution. (Ill. Const., art. VI, §16.) Paragraph (b) was amended in 1974 to cover conditional discharge and periodic imprisonment, new forms of sentence created by the adoption in Illinois of the Unified Code of Corrections.

Paragraph (c)

Paragraph (c) was added in 1971 to establish a procedure for appeals from orders in criminal cases concerning bail. Prior to its adoption, the only avenue of relief was an original petition to the Supreme Court for a writ of *habeas corpus*. Subparagraph (c)(2) was amended in 1974 to provide that the State may file an answer.

Paragraph (d)

Paragraph (d), added in 1975, provides that before a defendant may file a notice of appeal from a judgment entered on his plea of guilty, he must move in the trial court to vacate the judgment and withdraw his plea. Issues not raised in such a motion are waived. The time within which an appeal may be taken runs from the date on which the order disposing of the motion is entered. Provision is made for appointment of counsel and provision of a free transcript of the proceedings, which, under Rule 402(e), are required to be transcribed, filed, and made a part of the common law record.